

FIRST REGULAR SESSION

# SENATE BILL NO. 448

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR PEARCE.

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TERRY L. SPIELER, Secretary.

2105S.011

## AN ACT

To amend chapter 177, RSMo, by adding thereto six new sections relating to the procurement of construction by the design-build method by school districts.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Chapter 177, RSMo, is amended by adding thereto six new sections, to be known as sections 177.301, 177.302, 177.303, 177.304, 177.305, and 177.306, to read as follows:

**177.301. As used in this section, the following terms shall mean:**

**(1) "Design-build", a project for which the design and construction services are furnished under one contract;**

**(2) "Design-build contract", a contract between a school district and a design-build contractor to furnish the architecture, engineering, and related design services, and the labor, materials, and other construction services required for a specific construction project;**

**(3) "Design-build contractor", any individual, partnership, joint venture, corporation, or other legal entity that furnishes architecture or engineering services and construction services either directly or through subcontracts;**

**(4) "Design-build project", the design, construction, alteration, addition, remodeling, or improvement of any school buildings or facilities under contract with a school district;**

**(5) "Design criteria package", performance-oriented specifications for the design-build project sufficient to permit a design-build contractor to prepare a response to the school district's request for proposals for a design-build project, which may include preliminary designs for the project or portions thereof.**

**177.302. 1. Notwithstanding any provision of this chapter to the**

2 contrary, as an alternative to the requirements and procedures  
3 specified by sections 177.086 to 177.171, any school district of this state  
4 is authorized to enter into design-build contracts for design-build  
5 projects that exceed an expenditure of one million dollars.

6 2. In using a design-build contract, the school district shall  
7 establish a written procedure by rule for prequalifying design-build  
8 contractors before such design-build contractors will be allowed to  
9 make a proposal on the project.

10 3. The school board shall adopt procedures for:

11 (1) The prequalification review team;

12 (2) Specifications for the design criteria package;

13 (3) The method of advertising, receiving, and evaluating  
14 proposals from design-build contractors;

15 (4) The criteria for awarding the design-build contract based on  
16 the design criteria package and a separate proposal stating the cost of  
17 construction; and

18 (5) Other methods, procedures, and criteria necessary to  
19 administer this section.

20 4. The school district is authorized to issue a request for  
21 proposals to a maximum of five design-build contractors who are  
22 prequalified in accordance with subsection 2 of this section.

23 5. The school district may require approval of any person  
24 performing subcontract work on the design-build project including, but  
25 not limited to, those furnishing design services, labor, materials, or  
26 equipment.

177.303. 1. Prior to the prequalification process specified in  
2 section 177.302, the school district shall publicly advertise, once a week  
3 for two consecutive weeks, in a newspaper of general circulation,  
4 qualified under chapter 493, RSMo, located within the city in which the  
5 school district is located, or if there be no such newspaper, in a  
6 qualified newspaper of general circulation in the county, or if there be  
7 no such newspaper, in a qualified newspaper of general circulation in  
8 an adjoining county, and may advertise in business, trade, or minority  
9 newspapers, for qualification submissions on said design-build project.

10 2. If the school district fails to receive at least two responsive  
11 submissions from prequalified design-build contractors, submissions  
12 shall not be opened and it shall readvertise the project.

13           **3. The school district shall have the right to reject any and all**  
14 **submissions and proposals.**

15           **4. The proposals from prequalified design-build contractors shall**  
16 **be submitted sealed and in writing, to be opened publicly at the time**  
17 **and place of the school district's choosing. Technical proposals and**  
18 **qualifications submissions shall be submitted separately from any cost**  
19 **proposals. No cost proposal shall be opened until the technical**  
20 **proposals and qualifications submissions are first opened, evaluated,**  
21 **and ranked in accordance with the criteria identified by the school**  
22 **district in the request for proposals.**

23           **5. The design-build contract shall be awarded to the design-build**  
24 **contractor whose proposal represents the best overall value to the**  
25 **school district in terms of quality, technical skill, schedule, and cost.**

26           **6. No proposal shall be entertained by the school district which**  
27 **is not made in accordance with the request for proposals furnished by**  
28 **the school district.**

29           **7. The school district shall pay a reasonable stipend to**  
30 **prequalified responsive design-build contractors who submit a**  
31 **proposal, but are not awarded the design-build contract.**

**177.304. 1. The payment bond requirements of section 107.170,**  
2 **RSMo, shall apply to the design-build project. All persons furnishing**  
3 **design services shall be deemed to be covered by the payment bond the**  
4 **same as any person furnishing labor or materials; however, the**  
5 **performance bond for the design-build contractor does not need to**  
6 **cover the design services as long as the design-build contractor or its**  
7 **subcontractors providing design services carry professional liability**  
8 **insurance in an amount established by the school district in the request**  
9 **for proposals.**

10           **2. Any person or firm providing architectural, engineering, or**  
11 **land surveying services for the design-build contractor on the**  
12 **design-build project shall be duly licensed or authorized in Missouri to**  
13 **provide such services as required by chapter 327, RSMo.**

**177.305. 1. A school district planning a design-build project shall**  
2 **retain an architect or engineer, as appropriate to the project type,**  
3 **under sections 8.285 to 8.291, RSMo, to assist with programming, site**  
4 **selection, master plan, the design criteria package, preparation of the**  
5 **request for proposals, prequalifying design-build contractors,**

6 evaluation of proposals, and preparation of forms necessary to award  
7 the design-build contract. The school district shall also retain that  
8 same architect or engineer or another to perform contract  
9 administration functions on behalf of the school district during the  
10 construction phase and after project completion. If the school district  
11 has an architect or engineer capable of fulfilling the functions  
12 described in this section, the school district is exempt from being  
13 required to retain another such professional.

14       2. Any architect or engineer who is retained by a school district  
15 under this section shall be ineligible to act as the design-build  
16 contractor, or to participate as part of the design-build contractor's  
17 team as a subcontractor, joint venturer, partner, or otherwise for the  
18 same design-build project for which the architect or engineer was hired  
19 by the school district.

177.306. Under section 327.465, RSMo, any design-build  
2 contractor that enters into a design-build contract for a school district  
3 is exempt from the requirement that such person or entity hold a  
4 certificate of registration or such corporation hold a certificate of  
5 authority if the architectural, engineering, or land surveying services  
6 to be performed under the contract are performed through  
7 subcontracts with properly licensed and authorized persons or entities,  
8 and not performed by the design-build contractor or its own employees.

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